

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 064965-0141							
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or Printed Name _____		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Application Number 09/413,821</td> <td style="width: 50%; padding: 5px;">Filed October 07, 1999</td> </tr> <tr> <td colspan="2" style="padding: 5px;">First Named Inventor Philip KELLER</td> </tr> <tr> <td style="padding: 5px;">Art Unit 2611</td> <td style="padding: 5px;">Examiner T Bocure</td> </tr> </table>		Application Number 09/413,821	Filed October 07, 1999	First Named Inventor Philip KELLER		Art Unit 2611	Examiner T Bocure
Application Number 09/413,821	Filed October 07, 1999								
First Named Inventor Philip KELLER									
Art Unit 2611	Examiner T Bocure								
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>									
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>36,324</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		<div style="text-align: center;">  _____ Signature </div> <div style="text-align: center;"> Alexander V. Yampolsky _____ Typed or printed name </div> <div style="text-align: center;"> 202.756.8636 _____ Telephone number </div> <div style="text-align: center;"> June 3, 2009 _____ Date </div>							
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.									
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.									

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	Customer Number: 20277
	:	
Philip KELLER	:	Confirmation Number: 2466
	:	
Application No.: 09/413,821	:	Group Art Unit: 2611
	:	
Filed: October 07, 1999	:	Examiner: T. Bocure
	:	
For: AUTOMATIC OUTPUT DRIVE LEVEL CONTROL IN HOME NETWORKING TRANSCEIVER		

REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang et al. (6,377,666). As demonstrated below, there is a clear deficiency in the prima facie case in support of this rejection.

In particular, claim 1 recites a method of configuring a transceiver having an output driver for driving an output terminal to provide data transmission via residential twisted pair wiring. The method comprises the steps of:

- setting a DC level at the output terminal for supplying a transmit signal of a prescribed level to the residential twisted pair wiring,

- comparing a controlled value representing the DC level with a predetermined threshold level, and

- controlling the output driver until the controlled value is equal to the threshold level.

The Examiner considers transmitter 115 and receiver 117 (FIG. 1B of Cheng) to correspond to the claimed transceiver.

However, the Examiner has failed to point out wherein Cheng discloses the claimed steps of setting a DC level at the output terminal for supplying a transmit signal of a prescribed level to the residential twisted pair wiring, comparing a controlled value representing the DC level with a predetermined threshold level, and controlling the output driver until the controlled value is equal to the threshold level.

Instead, the Examiner addresses the subject matter absent in claim 1, such as “a line driver”, and “a controller ... controlling the power level of the line driver through elements 203 and 205 according to the power level for transmitting the signal, high and low (sic) power levels (DLC) as in claims 1 and 3” (see page 3 of the Office Action).

Hence, the Examiner has failed to ascertain the differences between the prior art and the claims in issue, as required to establish obviousness in accordance with *Graham v. John Deere Co.* 383 U.S. 1, 13, 148 U.S.P.Q. 459, 465 (1966).

Further, the Examiner indicates that “[w]hat Chang fails to teach is that the controller having (sic) a comparator for comparing the controlled value levels with a predetermined threshold value in order to generate the driving high and low power level as in claim 1. However, it is obvious ... that the controller of Cheng to have (sic) a comparator for generating the high and low power to accommodate two modes of operation... and control the DC level of the signal to be transmitted through existing telephone line at the time the invention was made” (see page 3 of the Office Action).

It is respectfully submitted that this subject matter is not recited in claim 1. Instead, claim 1 recites comparing a controlled value representing the DC level (set at the output terminal for

supplying a transmit signal of a prescribed level to the residential twisted pair wiring) with a predetermined threshold level, and controlling the output driver until the controlled value is equal to the threshold level.

In accordance with the Guidelines for Determining Obviousness, the key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reasons why the claimed invention would have been obvious.

Instead, the Examiner analyzes the obviousness of the subject matter, which is not part of the claimed invention (i.e. whether or not “the controller having a comparator for comparing the controlled value levels with a predetermined threshold value in order to generate the driving high and low power level” would have been obvious).

Therefore, the Examiner’s rejection of the claims is based on legal and factual deficiencies.

It is noted that Cheng does not teach or suggest the steps recited in the rejected claims. The reference discloses the transmitter 115 having control logic 201 (FIG. 2). However, the control logic of Chen does not compare any controlled value representing the DC level set at the output transmit terminal with a predetermined threshold signal to control the output driver until the controlled value is equal to the threshold level, as claim 1 requires.

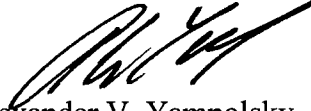
Moreover, the reference provides no reasons to conclude that the claimed steps would be obvious.

Application No.: 09/413,821

Due to clear errors in the Examiner's rejection of claims 1-4 under 35 U.S.C. 103, reconsideration of this rejection under the Pre-Appeal Brief Conference Program is respectfully requested.

Respectfully submitted,

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